

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

NAOMI SPENCER DALY,
DARRELL CASTLE and
DORREL W. ARTHUR,

Plaintiffs,

v.

No. 3:16-cv-08981

NATALIE TENNANT,
In her official capacity as
Secretary of State of the
State of West Virginia,

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION TO JOIN BRIAN WOOD IN HIS
OFFICIAL CAPACITY AS CLERK OF THE COUNTY COMMISSION OF PUTNAM
COUNTY, WEST VIRGINIA AS AN ADDITIONAL PARTY DEFENDANT**

Briefly stated, *W.Va. Code* §§ 3-5-23 and 24 task the Clerks of the County Commissions of their respective counties with oversight of candidacy and ballot access for persons seeking county office pursuant to the petition process. With regard to legislative, judicial and statewide offices, that responsibility rests with the West Virginia Secretary of State.

Dorrel W. Arthur is a qualified, nonaffiliated, independent candidate for the County office of Putnam County Commissioner. He gained his position on the ballot through the petition process in *W.Va. Code* §§ 3-5-23, 24. His petition in support of his candidacy was reviewed by the Putnam County Clerk. His certificate of nomination was filed with the Putnam County Clerk's office. It was the Putnam County Clerk who placed Mr. Arthur's name on the ballot for the November 8, 2016, general election. It was the Putnam County Clerk, admittedly acting on advice from the West Virginia Secretary of State, who advised Mr. Arthur that he would be removed from the ballot as a candidate and required to participate as a "write in" if he so desired.

Under the circumstances, any resolution of the pending emergency motion for temporary restraining order that does not provide direction to Brian Wood as the Putnam County Clerk on what to do regarding Mr. Arthur's position on the ballot could lead to inconsistency in the manner in which Mr. Arthur is treated relative to the other plaintiffs in this case.

For the reasons stated here and in the previously filed motion for joinder, Brian Wood, in his official capacity as Clerk of the County Commission of Putnam County, West Virginia, should be joined in this action as an additional defendant.

DORREL W. ARTHUR
BY COUNSEL

s/Harvey D. Peyton
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Counsel for Dorrel W. Arthur

CERTIFICATE OF SERVICE

I, Harvey D. Peyton, counsel for Dorrel W. Arthur, do hereby certify that I have this 21st day of September, 2016, served a copy of the foregoing **“Memorandum in Support of Motion to Join Brian Wood in his Official Capacity as Clerk of the County Commission of Putnam County, West Virginia as an Additional Party Defendant”** upon the following parties of record by using the Court’s CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Counsel for Plaintiffs:

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No attorney has yet made an appearance for the Defendant, Secretary of State Natalie Tennant. However, I hereby certify that on September 21, 2016, I attempted service of the foregoing **“Memorandum in Support of Motion to Join Brian Wood in his Official Capacity as Clerk of the County Commission of Putnam County, West Virginia as an Additional Party Defendant”** upon the Defendant by emailing a copy to the following attorneys by electronic mail:

Ashley Summitt
Chief Counsel, West Virginia Secretary of State
eamsummitt@wvsos.com

Timothy Leach
Assistant Counsel, West Virginia Secretary of State
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J. Robert Leslie
Senior Deputy Attorney General, West Virginia Attorney General
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s/Harvey D. Peyton

HARVEY D. PEYTON